

REMARKS

At page 2 of the Office Action, the Examiner required restriction of the application to one of three (3) allegedly distinct inventions:

Group I: Claims 1-68, drawn to an apparatus and method for dispensing and storing flexible conduit, classified in class 604, subclass 164.01;

Group II: Claims 69-85, drawn to a method of dispensing a fluid, classified in class 604, subclass 93.01; and

Group III: Claims 86-102, drawn to a method of using a medical sensor, classified in class 604, subclass 66.

In response, Applicants elect Group I, namely claims 1-68.

However, Applicants do so with traverse. 35 U.S.C. §121 provides that "If two or more independent and distinct inventions are claimed in one application, the Commissioner may require the application to be restricted to one of the inventions." M.P.E.P. §802.01 deviates from the plain meaning of "independent and distinct" by interpreting "and" to mean "or". The Patent Office relies on the absence from the legislative history of anything contrary to this interpretation as support for their position that "and" means "or". Applicants respectfully note that this position is contrary to the rules of statutory construction. Restriction between two dependent inventions is not permissible under the plain meaning of 35 U.S.C. §121.

Applicants further urge the Examiner take into consideration that the subject matter of each of the claim Groups is linked by a common inventive concept. According to M.P.E.P. §803, there are two criteria for a proper restriction requirement. First, the two inventions must be independent and distinct. In addition, there must be a serious burden on the Examiner if restriction is not required. Even if the first criterion has been met in the present case, which it has not, the second criterion has not been met.

Applicants assert that a search into prior art with regard to the invention of the different Groups is so related that separate significant search efforts should not be necessary. Accordingly, there is no serious burden on the Examiner to collectively examine the different claim Groups of the subject application. Therefore, restriction is not proper under M.P.E.P. §803.


Consequently, Applicants respectfully request the Examiner reconsider and withdraw the restriction requirement. It is also submitted that this application is now in good order for allowance and such allowance is respectfully solicited. Should the Examiner believe minor matters still remain that can be resolved in a telephone interview, the Examiner is urged to call Applicants' undersigned attorney.

Respectfully submitted,

GATES & COOPER LLP
Attorneys for Applicant(s)

Howard Hughes Center
6701 Center Drive West, Suite 1050
Los Angeles, California 90045
(310) 641-8797

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By: 
Name: William J. Wood
Reg. No.: 42,236

WJW/bjs

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